

If the examiner disagrees with this interpretation, the examiner is urged to express the same. Because of all of the above, the reference to Arens cannot be termed or held to be controlling as a base reference.

The examiner continues to state that "Arens does not show the bars being assembled by clamping the grate bars into a unit and thereafter drilling a hole therethrough all of the clamped grate bars, passing a rod through all of the drilled holes and fixing the ends of the rods to prevent a movement of the rods in any direction. The examiner is reminded that the previous method steps are performed while the assembled grate bars are in an elevated position. This is not shown by either Arens or Kawachi. Therefore, what is claimed is not shown or illustrated in either of the two above references. The third reference applied by the examiner in rejecting the above claims is McEldowney. There is nothing new in drilling a hole through clamped multiple parts. However, this knowledge and the teachings of McEldowney does not lead a person having ordinary skill in the art to drill holes through separate but clamped grate bars that are elevated above their final destination, pass bolts through the drilled holes and then lower the finished assembly to its final resting place. This is all that is claimed and the examiner's rejection is based on hindsight rejection. Yes, this argument has been many times before. The examiner is challenged to identify the various teachings supposedly found in the prior art. The applicant states "that any person having ordinary skill and having the references Arens, Kawachi et al and McEldowney in front of him/her would never be able to write the claims 9, 12, and 13." There must be a teaching in the references to

do so. This is not the case in considering the references. If the examiner is able to find those teachings, he is invited to identify those teachings in detail. The obvious modifications cannot flow from applicant's specification. It is also a known fact that an examiner cannot modify a first reference with a second reference and then modify the modified version with a third reference.

As per claim, 12 the examiner is modifying Arens with the alleged teachings of Kawachi with McEldowney by stating that McEldowney shows a plurality of rods in multiple locations along the grate bars including any of said curvatures. It is pointed out to the examiner that none of the above references place any grate bars along any curves so that any teachings of a multiple of rods cannot be found in the references. The examiner is treating claim 12 as if a structure is claimed, but applicant is claiming method steps. Where are these method steps in the references?

As per claim 13, the examiner states that "Arens as modified by Kawachi et al and McEldowney shows clamping bars (50, 22 from McEldowney) on top and below the grate." The McEldowney reference is considered to be totally non-analogous art. It has nothing to do with a method of making poll grates. McEldowney states that a subject of of the invention is a method of locating a pilot hole that extends only part of the way through a work piece, and of guiding a drill to extend this hole all the way through the work piece. This is not what applicant is claiming. Applicant is claiming: placing clamping bars on top and below said grate bars, clamping said clamping bars together to assure an exact drilling through said assembled grate bars. Where in any of the references cited is this language found?

Par. 3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arens in view of McEldowney and Kawachi, as applied to claim 9 above and further in view of Wright. The examiner is now applying 4 (four) references to make applicant's claim obvious. The CCPA and the CAFC have long established that obviousness must flow from the references cited. The examiner has not followed this mandate. The examiner states "that Arens as modified shows all of the claimed structures. The examiner is advised that applicant is not claiming any structures but a method of assembling a pool grate. The examiner is also advised that any assembly of the pool grate bars is happening in an elevated position above the gutter of the pool and that once the grate is fully assembled, The assembled grate is lowered into its final position. None of the references teach or disclose these method steps.

Because of all of the above, the examiner is respectfully requested to reconsider the rejection of claims 9 - 13 and pass this application to an early allowance.

Robert B. Lawson

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